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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,139	02/27/2004	Kevin P. Connors	ALTU-1110	9270
28584	7590	06/09/2005	EXAMINER	
STALLMAN & POLLOCK LLP SUITE 2200 353 SACRAMENTO STREET SAN FRANCISCO, CA 94111			JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,139	CONNORS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Henry M. Johnson, III	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 and 28-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>050304 122704</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's election without traverse of claims 15-27 in the reply filed on May 16, 2005 is acknowledged.

#### ***Specification***

The disclosure is objected to because of the following informalities: on page 3, line 28 the word "of " before due is improper.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner believes these claims were intended to be dependent from claim 24.

Claim 25 recites the limitation "the cooling" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 26 recites the limitation "the cooling" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 27 recites the limitation "the cooling" in line 1. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,885,274 to Fullmer et al. Fullmer et al. teach a method of thermal modification of dermatological tissue using non-laser infrared light energy. A high-energy incandescent-type lamp, such as a quartz tungsten halogen lamp, operated in a pulsed mode with a high voltage input, creates a particular energy output. Applications disclosed of such apparatus and methods include treatment of the dermis and/or sub-epidermal tissues for the purpose of skin recontouring (wrinkle removal), thermal destruction of hair follicles for the purpose of hair removal, and others (abstract). Passive heat sinks including glass or sapphire tip probes are disclosed providing a transmissive material in contact with the skin (Col. 9, lines 46-50). Fullmer et al. disclose both passive and dynamic cooling thus teaching equivalency of the two means used in the method (Col. 9, lines 46-53). Fullmer et al. teach cooling prior to radiation (Claim 7), during radiation (Claim 8) and post radiation (Col. 9, line 1). The cooling of the epidermal layer in conjunction with irradiation inherently yields an inverted temperature gradient.

Claims 15-17, 19-21 and 23-26 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication US 2004/0093042 to Altshuler et al. Altshuler et al. teach a method and apparatus for treating tissue in a region at depth by applying optical radiation thereto of a wavelength able to reach the depth of the region and of a selected relatively low power for a duration sufficient for the radiation to effect the desired treatment while concurrently cooling tissue above the selected region to protect such tissue (abstract). A disclosed use is for reshaping procedures such as non-invasive wrinkle removal (paragraph 0030). The irradiation

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source (Fig. 1, # 1) may be a radiant lamp, a halogen lamp, an incandescent lamp, an arc lamp, a fluorescent lamp, a light emitting diode, a laser (including diode and fiber lasers), the sun or other suitable optical energy source (paragraph 0044). Cooling is provided by a contact plate (Fig. 1, # 8) and may be made out of a suitable heat transfer material, and also, where the plate contacts tissue, of a material having a good optical match with the tissue. Sapphire is an example of a suitable material for the plate. In some embodiments, contact plate 8 may have a high degree of thermal conductivity, for example, to allow cooling of the surface of the tissue by cooling mechanism (paragraph 0050). The irradiation time may vary from approximately 2 seconds to approximately 2 hours (paragraph 0012). Cooling may be applied concurrently with the irradiation or prior to irradiation (paragraph 0011). The cooling of the epidermal layer in conjunction with irradiation inherently yields an inverted temperature gradient.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 22 and 27 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2004/0093042 to Altshuler et al. as applied to claims 19 and 23 above and further in view of U.S. Patent 5,885,274 to Fullmer et al. Both are discussed above. Altshuler et al. does not teach the cooling of the treatment area after irradiation. Fullmer et al. teach cooling prior to radiation (Claim 7), during radiation (Claim 8) and post radiation (Col. 9, line 1). The cooling of the epidermal layer in conjunction with irradiation inherently yields an inverted temperature gradient. It would have been obvious to one having ordinary skill in the art at the time the invention was made to cool the epidermal layer following irradiation as taught by Fullmer et al. as an obvious and logical additional step in the method of Altshuler et al. to insure protection of the epidermal layer of tissue.

### ***Conclusion***

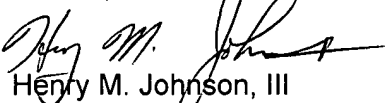
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,402,739 to Neev teaches treatment of wrinkles using electromagnetic energy with cooling prior to irradiation and/or subsequent to irradiation. U.S. Patent 6,387,089 to Kreindel et al. teaches wrinkle treatment with a flashlamp using a cooling gel prior to treatment. The gel is interpreted as a transmissive material. U.S. Patent 5,810,801 to Anderson et al. discloses wrinkle treatment using incoherent light and cooling prior to and concurrent with the irradiation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Henry M. Johnson, III  
Primary Examiner  
Art Unit 3739